

**STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY**

IN RE:)	
)	
WALGREENS #04406)	Complaint No. 2017-005927
Permit No. 006627)	
2630 NE Vivion Rd.)	
Kansas City, MO 64119)	

**SETTLEMENT AGREEMENT BETWEEN MISSOURI
BOARD OF PHARMACY AND WALGREENS #04406**

Come now Walgreens #04406 ("Respondent" or the "Pharmacy") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Respondent knowingly and

voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Respondent acknowledges that it has received a copy of the draft Complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 006627, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Walgreens #04406 ("Respondent" or the "Pharmacy") is licensed as a pharmacy under the laws of the State of Missouri, Permit No. 006627. Respondent's permit was at all times relevant herein current and active.

3. On February 10, 2017 and February 14, 2017, the Board received two loss reports from the Pharmacy. A summary of the information reported is:

Date of discovery	Drug	Quantity	Reason for loss
1/31/2017	Oxycodone/APAP 10/325mg ²	190	Employee theft/diversion/robbery
2/10/2017	Oxycodone/APAP 10/325mg	211	other

¹ All statutory references are to the 2016 Revised Statutes of Missouri, as amended, unless otherwise stated.

² Oxycodone is a Schedule II controlled substance.

4. The first and second loss reports represent the same loss. A second loss report was made because the PIC said that the first report was filled out incorrectly. The loss was unexplained although the PIC suspected a newly hired technician, who the PIC learned after hiring, had allegedly been fired under suspicion of theft by her previous employer.

5. On August 7, 2017, the Board received another loss report, summarized as follows:

Date of discovery	Drug	Quantity	Reason for loss
7/31/2017	Hydrocodone/APAP 5/325mg ³	661	Other

6. Prior to these losses being discovered, the hydrocodone/APAP 5/325mg stock bottle was, at times, left out on the counter instead of being put away immediately after use.

7. Prior to these losses being discovered, controlled substance drug orders were checked in by technicians, but since the reported drug losses were found, the duty of checking in the orders was transferred to the overnight pharmacist.

8. As of September 28, 2017, Respondent had not conducted any controlled substance audits related to the reported losses.

9. The Board received a fourth loss report by fax on 10/05/2017, which is summarized below:

Date of discovery	Drug	Quantity	Reason for loss
9/25/2017	Alprazolam 1mg ⁴	1250	Other

10. Board Inspector Andi Miller conducted controlled substance audits for three time periods: June 9, 2016 (2:46am) through December 6, 2017 (11:30pm); August 29, 2016 (5:17pm)

³ Hydrocodone is a Schedule II controlled substance.

⁴ Alprazolam is a Schedule IV controlled substance.

through December 6, 2017 (11:30pm), and June 10, 2017 (12:24am) through December 6, 2017 (11:30pm).

11. The results of the audit for June 9, 2016 (2:46am) through December 6, 2017 (11:30pm) are:

Time Period: 06/09/2016 (2:46am) – 12/06/2017 (11:30pm)			
Drug & Strength	Total Accountable For	Total Accounted For	Difference
Alprazolam 0.25mg (CIV) ⁵	46840	46419	-421
Alprazolam 0.5mg (CIV)	162806	162227	-579
Alprazolam 1mg (CIV)	140800	139629	-1171
Alprazolam 2mg (CIV)	40730	40740	10
Clonazepam 0.5mg (CIV)	60428	60051	-377
Clonazepam 1mg (CIV)	60445	59982	-463
Clonazepam 2mg (CIV)	8750	8889	139
Diazepam 5mg (CIV)	26850	26948	98
Diazepam 10mg (CIV)	23300	23362	62
Hydrocodone/APAP 5/300mg (CII)	500	501	1
Hydrocodone/APAP 5/325mg (CII)	221914	222276	362
Hydrocodone/APAP 7.5/325mg (CII)	97663	97557	-106
Hydrocodone/APAP 10/325mg (CII)	224634	224823	189
Lorazepam 1mg (CIV)	32100	31373	-727
Oxycodone (IR) 5mg tablets (CII)	56079	56192	113
Oxycodone (IR) 10mg tablets (CII)	54411	54515	104
Oxycodone (IR) 15mg tablets (CII)	41255	41547	292
Oxycodone (IR) 30mg tablets (CII)	39530	39494	-36
Oxycodone/APAP 5/325mg (CII)	65755	65832	77
Oxycodone/APAP 7.5/325mg (CII)	25070	25181	111
Oxycodone/APAP 10/325mg (CII)	60518	60543	25
Phentermine 37.5mg tablets (CIV)	17790	17627	-163
Promethazine w/codeine syrup (CV)	39401	39008	-393
Zolpidem 10mg (CIV)	62150	61247	-903

⁵ The letter "C" followed by a roman numeral indicates the schedule number of the controlled substance.

12. The results of the audit for August 29, 2016 (5:17pm) through December 6, 2017 (11:30pm) are:

Time Period: 08/29/2016 (5:17pm) – 12/06/2017 (11:30pm)			
Drug & Strength	Total Accountable For	Total Accounted For	Difference
Alprazolam 0.25mg (CIV)	39810	39806	-4
Alprazolam 0.5mg (CIV)	139465	139625	160
Alprazolam 1mg (CIV)	120350	118479	-1871
Alprazolam 2mg (CIV)	32470	33344	874
Clonazepam 0.5mg (CIV)	53546	51271	-2275
Clonazepam 1mg (CIV)	51505	51295	-210
Clonazepam 2mg (CIV)	7450	7494	44
Diazepam 5mg (CIV)	29900	22676	-7224
Diazepam 10mg (CIV)	20250	20242	-8
Hydrocodone/APAP 5/300mg (CII)	500	501	1
Hydrocodone/APAP 5/325mg (CII)	183698	183094	-604
Hydrocodone/APAP 7.5/325mg (CII)	82000	81796	-204
Hydrocodone/APAP 10/325mg (CII)	186587	186039	-548
Lorazepam 1mg (CIV)	28450	28016	-434
Oxycodone (IR) 5mg tablets (CII)	48450	48364	-86
Oxycodone (IR) 10mg tablets (CII)	46946	46931	-15
Oxycodone (IR) 15mg tablets (CII)	35641	35663	22
Oxycodone (IR) 30mg tablets (CII)	33643	33644	1
Oxycodone/APAP 5/325mg (CII)	55009	54787	-222
Oxycodone/APAP 7.5/325mg (CII)	20896	20828	-68
Oxycodone/APAP 10/325mg (CII)	51186	50853	-333
Phentermine 37.5mg tablets (CIV)	15230	15356	126
Promethazine w/codeine syrup (CV)	30275	34033	3758
Zolpidem 10mg (CIV)	52400	51805	-595

13. The results of the audit for June 10, 2017 (12:24am) through December 6, 2017 (11:30pm) are:

Time Period: 06/10/2017 (12:24am) – 12/06/2017 (11:30pm)			
Drug & Strength	Total Accountable For	Total Accounted For	Difference
Alprazolam 0.25mg (CIV)	15075	14805	-270
Alprazolam 0.5mg (CIV)	56470	56168	-302
Alprazolam 1mg (CIV)	43900	43709	-191
Alprazolam 2mg (CIV)	11550	11623	73
Clonazepam 0.5mg (CIV)	22418	22155	-263
Clonazepam 1mg (CIV)	20714	20323	-391
Clonazepam 2mg (CIV)	2500	3234	734
Diazepam 5mg (CIV)	7600	7800	200
Diazepam 10mg (CIV)	7950	8304	354
Hydrocodone/APAP 5/300mg (CII)	500	501	1
Hydrocodone/APAP 5/325mg (CII)	73864	63420	-444
Hydrocodone/APAP 7.5/325mg (CII)	30776	30521	-255
Hydrocodone/APAP 10/325mg (CII)	67673	68539	866
Lorazepam 1mg (CIV)	10050	10681	631
Oxycodone (IR) 5mg tablets (CII)	21273	21158	-115
Oxycodone (IR) 10mg tablets (CII)	18772	18776	4
Oxycodone (IR) 15mg tablets (CII)	12692	12692	0
Oxycodone (IR) 30mg tablets (CII)	12139	12114	-25
Oxycodone/APAP 5/325mg (CII)	19286	19281	-5
Oxycodone/APAP 7.5/325mg (CII)	8404	8406	2
Oxycodone/APAP 10/325mg (CII)	18519	18518	-1
Phentermine 37.5mg tablets (CIV)	6280	6494	214
Promethazine w/codeine syrup (CV)	8514	9280	766
Zolpidem 10mg (CIV)	19670	19897	227

14. Respondent conducted its own audits of the same time periods and confirmed that, with some exceptions, the results of its audits were “overall...generally extremely similar” to those conducted by the Board.

15. The Pharmacy is required to maintain adequate security controls to prevent the loss or diversion of controlled substances, to-wit, 20 CSR § 2220-2.010(1)(H) provides as follows:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

16. Respondent failed to provide adequate security or effective controls and procedures to detect and prevent loss and/or theft of its controlled substances in violation of 20 CSR § 2220-2.010(1)(H).

17. Respondent is liable for violations of Chapter 338 or other relevant laws because, "any permit holder . . . at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation." § 338.210.5, RSMo.

JOINT CONCLUSIONS OF LAW

18. Respondent's conduct is cause for disciplinary action against Respondent's permit to operate a pharmacy under 20 CSR § 2220-2.010(1)(0), which provides:

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

19. Respondent violated Chapter 338 and applicable federal and state drug laws, rules and regulations such that cause exists to discipline Respondent's permit under §338.055.2(6) and (15), RSMo, which states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or

her certificate of registration or authority, permit or license for any one of any combination of the following causes.

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government . . .

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

A. Respondent's license, Permit No. 006627, is hereby **PUBLICLY CENSURED**.

B. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

C. Respondent, together with its heirs and assigns, and its attorneys, does hereby waive and release the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or

relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ **REQUESTS**

RS _____ **DOES NOT REQUEST**

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE AS A PHARMACY.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.


If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

RESPONDENT

WALGREENS PHARMACY #04406

By:



As authorized representative for
Walgreens Pharmacy #04406

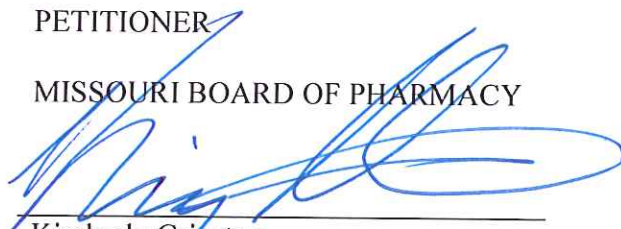
Printed: Rina Shah - GVP, Specialty & Retail Pharmacy Date:

Date: 8/21/2019

PETITIONER

MISSOURI BOARD OF PHARMACY

By:

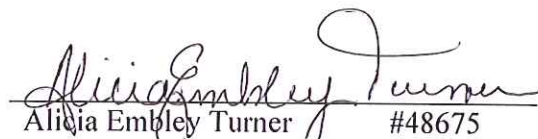


Kimberly Grinston
Executive Director

9/19/19

NEWMAN, COMLEY & RUTH P.C.

By:



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